

TITLE 16, CALIFORNIA CODE OF REGULATIONS, DIVISION 5

Board for Professional Engineers and Land Surveyors

May 31, 2002

NOTICE IS HEREBY GIVEN that the Board for Professional Engineers and Land Surveyors (“Board”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on July 15, 2002.

The Board does not intend to hold a hearing on this matter. If any interested party wishes that a hearing be held, he or she must make such a request in writing to the Board. The written request for such a hearing must be sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice and must be received by the Board at its office no later than 5:00 p.m. on June 30, 2002.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposal if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice under Contact Person and will be mailed to those persons who submit written statements or arguments related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 6716, 6717, and 8710 of the Business and Professions Code, and to implement, interpret or make specific Sections 6731.5, 6731.6, 6775, and 8780 of said Code, the Board is considering changes to Division 5 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board proposes to amend Section 404 of Division 5 of Title 16 of the California Code of Regulations to include definitions of the terms “negligence” and “incompetence” and to conform the existing definitions of “electrical engineering” and “mechanical engineering” to statute.

The Board is mandated to protect the public health, safety, welfare, and property by investigating complaints and pursuing disciplinary actions against licensees who have violated the Professional Engineers Act (Business and Professions Code section 6700, et seq.) and the Professional Land Surveyors’ Act (Business and Professions Code section 8700, et seq.). Two possible violations of these Acts are negligence and incompetence in the practices of professional engineering and professional land surveying. However, the terms “negligence” and “incompetence” as used in Sections 6775 and 8780 are not currently defined in either statute or regulation. Because they are

not specifically defined in statute or regulation, many licensees and consumers do not understand what these terms mean and that these terms have different meanings when applied to administrative disciplinary actions as opposed to civil tort litigation. Defining these terms as they are specifically used in Sections 6775 and 8780 for administrative disciplinary actions will provide clarity for the licensees and the consumers, which in turn will make the Board more effective in carrying out its mandate of consumer protection.

Currently, 16 CCR §404 contains definitions of “electrical engineering” and “mechanical engineering.” However, effective January 1, 2001, these definitions were moved into statute (Business and Professions Code sections 6731.5 and 6731.6, Stats. 2000, Ch. 1006 (S.B. 2030)). This proposal would amend the regulatory definitions to refer to the appropriate statutes. This is simply a conforming change without regulatory effect.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: NONE

Nondiscretionary Costs/Savings to Local Agencies: NONE

Local Mandate: NONE

Cost to Any Local Agency or School District for Which Government Code Sections 17500 through 17630 Requires Reimbursement: NONE

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

The proposed amendment is simply a clarification and does not place any new restrictions or requirements on individuals or businesses. It expands the options available to the Board’s licensees. Therefore, this proposed amendment has no impact on any business or individual.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: NONE

EFFECT ON SMALL BUSINESS

While the Board does not license businesses, but only individuals, some of its licensees do offer their professional services through business entities, some of which may be classified as small businesses. This proposed amendment will not have a negative impact on small businesses. In fact, it could have a positive effect in that it will clarify what the terms “negligence” and “incompetence” mean for administrative disciplinary purposes, thus assisting professional engineers and professional land surveyors to ensure that they conduct their professional practice and business in a manner that would not constitute negligence or incompetence in the professional practice, which will, in turn, lessen the chances that they might have administrative disciplinary action have taken against their licenses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments in writing relevant to the above determinations. Such statements or arguments must be sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice and must be received by the Board at its office no later than 5:00 p.m. on July 15, 2002.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based. Copies of the initial statement of reasons and all of the information upon which the proposal is based may be obtained upon request from the person designated in this Notice under Contact Person. The initial statement of reasons may also be obtained by accessing the website listed below.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations may be obtained upon request from the person designated in this Notice under Contact Person or by accessing the website listed below.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person designated in this Notice under Contact Person.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

You may obtain a copy of the final statement of reasons once it has been prepared by making a written request to the contact person designated in this Notice under Contact Person or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action and the substance of the proposed rulemaking may be addressed to:

Name:	Nancy A. Eissler
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The backup contact person is:

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Website Access: The Notice, exact language of the proposed regulations, the initial statement of reasons, and the final statement of reasons (when prepared) can be found at www.dca.ca.gov/pels.